Mohd Fariq Subramaniam v Naza Motor Trading Sdn Bhd

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5-22-270 OF 1996
JAMES FOONG J
24 JULY 1997

Contract *— Specific performance — Plaintiff in breach of contract — Agreement terminated — Whether specific performance could be ordered — Insufficient particulars in claim for specific performance — Whether prayer 'specific performance of the agreement' sufficient — Rules of the High Court 1980 O 18 r 15(1)*

Contract *— Duress — Economic duress — Principle applicable*

Contract *— Variation — Document evidencing variation not stamped — Whether document admissible — Whether document part and parcel of agreement*

Pursuant to an agreement, the plaintiff was appointed as one of the defendants' taxi drivers. The agreement provided, inter alia: (i) the plaintiff could purchase the taxi provided by the defendants at the expiration of the taxi permit; (ii) the plaintiff must pay daily rental for the taxi; and (iii) in the event of any breach of terms, the agreement could be terminated by notice in writing. When the plaintiff failed to pay his daily rental, the defendants repossessed the taxi. The defendants then send a notice to the plaintiff stating that the plaintiff's services as a taxi driver had been terminated. The plaintiff filed this suit, concentrating his case on the return of the taxi. He prayed for specific performance of the agreement and damages. The defendants contended that the repossession of the taxi was permitted by a variation to the agreement (P3). The plaintiff argued, inter alia: (i) he signed P3 under duress and that P3 was not stamped or witnessed; and (ii) he was allowed by the defendants to accumulate arrears of daily rentals and thus the defendants had waived their rights to terminate the agreement.

Held, dismissing the plaintiff's claim:

(1) The essence of the agreement was not the sale of the taxi; it was the appointment of the plaintiff as a taxi driver. The right to purchase the taxi only becomes effective when the agreement is still subsisting, and upon the expiry of the taxi permit. Though the notice only specified termination of the plaintiff's appointment as the defendants' taxi driver — since this was the essence and core of the subject matter of the agreement — a termination of the appointment meant no other than a termination of the agreement, there being no other subject matter on which the contract was founded. The plaintiff made no attempt to challenge it. This was fatal for the jurisdiction to order specific performance is based on the existence of a valid enforceable contract. Further, in the claim for specific performance, sufficient particulars must be elaborated that will elucidate the issues. This, the plaintiff had not done. For these reasons, the plaintiff's claim must be dismissed with costs (see pp 198F and 199A).

(2) The plaintiff had expressly admitted that he signed P3 and that the contents were read to him. In such circumstances, the law does not require its admission as evidence to be corroborated by witness since this is not a document where the executor disputes the signature thereon. This is more than sufficient to overrule this objection (see p 200F).

(3) The entire contents of P3 referred to the subject of the taxi which was the vehicle supplied by the defendants to the plaintiff to carry out his duties. P3 for all intents and purposes regulate the subject matter which is connected with the agreement. P3 could not stand on its own; it must be associated with the agreement. Therefore, it was part and parcel of the agreement. Since the agreement was stamped and P3 was a fragment of it, no objection could be sustained to its admissibility on the ground that it was not stamped (see p 200H–I).

(4) Economic duress is a coercion of will which vitiates consent. The principle to be applied in deciding this is an enquiry into whether the person alleged to be coerced did or did not protest; whether at the material time he did or did not have an alternative cause of action open to him such as an adequate legal remedy and whether after entering the contract he took steps to avoid it. From the evidence, the plaintiff made no protest of any form either before and after P3 was executed that he was coerced into executing it. No force was ever applied to make him sign. There was also no evidence adduced that he had taken any steps subsequently to repudiate this document. Further, the plaintiff had no alternative cause of action open to him, such as an adequate legal remedy at that time. Therefore, this objection was devoid of merit (see p 201A–C, D, F); *Pao On v Lau Yiu Long* [1980] AC 614 and *Third World Development & Anor v Atang Latief & Anor* (1990) 1 SCR 533 followed.

(5) There was no evidence that the defendants had allowed the plaintiff to alter the mode of payment of daily rental. Therefore, the plaintiff's claim of waiver was dismissed (see p 201I and 202A).

[Bahasa Malaysia summary

Mengikut satu perjanjian, plaintif dilantik sebagai seorang pemandu teksi defendan-defendan. Perjanjian tersebut memperuntukkan, antara lain: (i) plaintif boleh membeli teksi yang disediakan oleh defendan-defendan apabila permit teksi itu tamat; (ii) plaintif mesti membayar sewa harian untuk teksi itu; dan (iii) jika berlaku apa-apa pelanggaran terma-terma, perjanjian tersebut boleh ditamatkan dengan notis bertulis. Apabila plaintif gagal untuk membayar sewa harian, defendan-defendan memiliki semula teksi itu. Defendan-defendan kemudiannya menghantar notis kepada plaintif menyatakan bahawa khidmat plaintif sebagai pemandu teksi telah ditamatkan. Plaintif memfailkan guaman ini, menumpukan kesnya pada pengembalian

teksi. Plaintif menuntut pelaksanaan spesifik perjanjian dan ganti rugi. Defendan-defendan menegaskan bahawa pemilikan semula teksi itu dibenarkan oleh variasi kepada perjanjian tersebut (P3). Plaintif berhujah, antara lain: (i) beliau menandatangani P3 di bawah dures; dan (ii) beliau dibenarkan oleh defendan-defendan untuk mengumpul tunggakan sewa harian dan dengan itu defendan-defendan telah mengetepikan hak mereka untuk menamatkan perjanjian tersebut.

Diputuskan, menolak tuntutan plaintif:

(1) Intipati perjanjian tersebut bukannya penjualan teksi; ia adalah pelantikan plaintif sebagai pemandu teksi. Hak untuk membeli teksi hanya menjadi efektif apabila permit teksi itu tamat. Walaupun notis itu hanya menentukan penamatan pelantikan plaintif sebagai pemandu teksi defendan-defendan — oleh kerana ini adalah initipati dan teras perkara subjek perjanjian tersebut — penamatan pelantikan bermakna tidak lain daripada penamatan perjanjian, kerana tiada perkara subjek yang lain di mana kontrak itu diasaskan. Plaintif tidak membuat cubaan untuk mencabarnya. Ini adalah padah kerana bidang kuasa untuk memerintahkan pelaksanaan spesifik adalah berasaskan kepada kewujudan kontrak yang boleh dikuatkuasakan secara sah. Selanjutnya, dalam tuntutan pelaksanaan spesifik, butir-butir yang mencukupi mesti dihuraikan yang boleh menjelaskan isu-isu. Plaintif telah tidak berbuat demikian. Oleh itu, tuntutan plaintif mesti ditolak dengan kos (lihat ms 198F and 199A).

(2) Plaintif telah mengaku secara nyata bahawa beliau menandatangani P3 dan bahawa kandungannya dibaca kepadanya. Dalam keadaan sedemikian, undang-undang tidak memerlukan sokongan saksi untuk ianya diterima sebagai bukti kerana ini bukannya dokumen di mana pelaksana mempertikaikan tandatangan. Ini adalah lebih dari mencukupi untuk menolak bantahan ini (lihat ms 200F).

(3) Keseluruhan kandungan P3 merujuk kepada subjek teksi yang merupakan kenderaan yang disediakan oleh defendan-defendan kepada plaintif untuk menjalankan tugasnya. P3 untuk semua hasrat dan tujuan mengawal perkara subjek yang berkait dengan perjanjian tersebut. P3 tidak boleh berdiri dengan sendirinya; ia mesti dikaitkan dengan perjanjian tersebut. Oleh kerana perjanjian tersebut disetem dan P3 adalah sebahagian daripadanya, tiada bantahan boleh dibenarkan berkenaan dengan penerimaannya atas alasan ia tidak disetem (lihat ms 200H–I).

(4) Dures ekonomi adalah satu paksaan kehendak yang merosakkan keizinan. Prinsip yang perlu dipakai untuk memutuskan ini adalah siasatan sama ada orang yang dikatakan dipaksa membantah atau tidak; sama ada pada masa material beliau mempunyai kausa tindakan alternatif seperti remedi undang-undang yang sah dan sama ada selepas mengikat kontrak beliau mengambil langkah untuk mengelakkannya. Daripada keterangan, plaintif

tidak membuat apa-apa bantahan sama ada sebelum dan selepas P3 dilaksanakan bahawa beliau telah dipaksa untuk melaksanakannya. Tiada paksaan digunakan untuk membuatkan plaintif menandatangani. Juga tiada bukti yang dikemukakan bahawa beliau telah mengambil apa-apa langkah untuk membatalkan dokumen ini. Selanjutnya, plaintif tidak mempunyai kausa tindakan alternatif, seperti remedi undang-undang yang sah pada masa itu. Oleh itu, bantahan ini tidak mempunyai merit (lihat ms 201A–C, D, F); *Pao On v Lau Yiu Long* [1980] AC 614 dan *Third World Development & Anor v Atang Latief & Anor* (1990) 1 SCR 533 diikut.

(5) Tidak ada bukti bahawa defendan telah membenarkan plaintif untuk menukar cara bayaran sewa harian. Oleh itu, tuntutan plaintif berkenaan dengan pengetepian ditolak (lihat ms 201I dan 202A).

Notes

For cases on specific performance, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2157–2177.

For a case on economic duress, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) para 1509.

For cases on variation, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2293–2294.

Cases referred to

Pao On v Lau Yiu Long [1980] AC 614 (folld)

Third World Development & Anor v Atang Latief & Anor (1990) 1 SCR 533 (folld)

Legislation referred to

Rules of the High Court 1980 O 18 r 15(1)

S Saravanan (*Karpal Singh & Co*) for the plaintiff.

Megat Abdul Munir (*Leong & Megat*) for the defendant.

James Foong J: The defendants had, according to the recital of an agreement between the parties dated 11 February 1991 ('the agreement'), 50 taxi permits for operation of taxis in Kuala Lumpur, Petaling Jaya and Shah Alam. At the request of the plaintiff, the defendants under the agreement appointed the plaintiff as one of their taxi drivers. The primary and relevant terms of the agreement in connection of this suit are as follows:

(1) the plaintiff to pay (which he did) a sum of RM3,000 to the defendants. Presumably, this was for a down payment towards the purchase of a vehicle ('the taxi') which was supplied by the defendants to the plaintiff for his operation during the term of the agreement. The purchase could only be made at the expiration of the taxi permit which was on 31 January 1997 — cll 1 and 2 of the agreement and annex B attached thereto (annex B) respectively;

(2) the plaintiff shall pay to the defendants a daily rental of RM43 per day, presumably for the use of the taxi and the licence that went with it — cl 5 of annex B;

(3) in the event of any party breaching the terms of the agreement and annex B, the contract between the parties could be terminated by notice in writing — cll 4 and 9 of the agreement and annex B; and

(4) such notice of termination must be by way of a telegram — cl 5 of the agreement.

On or about 23 January 1996, the plaintiff discovered that the taxi was repossessed by the defendants. On his door steps was a notice of repossession issued by the defendants stating the reason as: the plaintiff had failed to pay an outstanding amount of daily rentals. The plaintiff then attempted to secure the release of the taxi from the defendants but failed. This instigated his solicitors' letter to the defendants dated 2 February 1996 wherein they threatened legal action for the return of the taxi since they alleged that it was unlawfully repossessed. In response, the defendants instead sent a telegram to the plaintiff informing him that his services as a taxi driver with the defendants would be terminated with effect from 10 February 1996. Two further letters from the plaintiff's solicitors followed, each demanding a reply to their first letter to the defendants. When no reaction came from the defendants, the plaintiff filed this suit. Here he seeks the following reliefs:

(1) specific performance of the agreement;

(2) damages in addition to or in lieu of specific performance;

(3) special damages in the sum of RM150 per day from 26 January 1996 till 21 May 1996 and still continuing; and

(4) costs.

The defendants' defences are these: the plaintiff was in breach of the agreement in failing to pay his daily rentals. This caused the taxi to be repossessed as permitted by a variation to the agreement dated 17 April 1995. As the plaintiff had breached the agreement, his appointment under the contract is terminated. The relevant notice by way of the telegram was sent. Added to the statement of defence are counterclaims for:

(1) damages suffered by the defendants due to the loss of daily rental subsequent to the repossession;

(2) costs of repossession;

(3) arrears of daily rental income due by the plaintiff before the repossession; and

(4) interest and costs.

The plaintiff then filed his reply. Here he denies that the alleged variation to the agreement dated 17 April 1995 was in 'any way intended, or meant to vary and/or change the agreement since it does not refer to the agreement itself'. In the alternative, he pleads that he signed a document which evidenced this variation under duress, coupled with the fact that this

document is not stamped or witnessed. The plaintiff then adds that he was allowed by the defendants to accumulate arrears of daily rentals to be paid at an appropriate period. By such action, the defendants had waived their rights to terminate the agreement by reason of the plaintiff's delay in paying the daily rentals within the time as specified.

From the plaintiff's pleadings and that of his evidence, there is no mention or challenge to the defendants' termination of his appointment as the defendants' taxi driver by the notification through the telegram. Examining the evidence, starting off with the plaintiff's solicitors first letter dated 21 February 1996, the claim began with a demand for the return of the taxi. However, when the response was not a refusal but a termination of the plaintiff's appointment, the plaintiff did not seem perturbed. His solicitors continued with two subsequent letters — both requesting the defendants to reply to their first letter — with no comment made on the termination. Next came the statement of claim; no challenge is made on the termination. This position remained the same even in the reply and defence to counterclaim. When it came to trial, no assertion was made which could be considered as a direct challenge to the termination. The entire case of the plaintiff was concentrated on the return of the taxi. So intense was this concentration that the plaintiff began his testimony by specifying that 'the main nature of the agreement is: the transfer of the taxi to him after the expiration of the taxi permit on 31 January 1997, as he had paid RM3,000 down payment for it'.

Sadly, I am afraid the plaintiff is unable to see the wood from the trees. The essence of the agreement, in my view, is not the sale of the taxi; it is the appointment of the plaintiff as a taxi driver. The entire agreement speaks of this fact, with clauses regulating the obligations of the parties towards achieving mutual benefits — where one supplies the vehicle in return for daily rental while the other drives to earn a living by charging fare paying passengers. It is definitely not a sale and purchase of goods, albeit the taxi. The right to purchase the taxi only becomes effective when the agreement still subsists, and upon the expiry of the taxi permit on 31 January 1997. Therefore, in order to secure the right to purchase the taxi, certain preconditions must be met, one of which is certainly the continual existence of the agreement. And what is the plaintiff's approach to this with glaring evidence adduced by the defendants that the agreement was terminated by the telegram? Though admittedly, the telegram only specifies termination of the plaintiff's appointment as the defendants' taxi driver, but since this is the essence and core of the subject matter of the agreement, a termination of the appointment means no other than a termination of the agreement — there being no other subject matter on which the contract is fou ded. He just ignored it, making no attempts to challenge it. This, in my opinion is fatal for 'the jurisdiction to order specific performance is based on the existence of a valid enforceable contract' — *Chitty on Contract (General Principles)* (27th Ed) at para 27-002 of . Thus the correct approach should be to firstly seek a declaration to the effect that the termination by the defendants is unlawful, null and void. This can then be followed by a request for the consequential order for specific performance of the agreement.

A In the claim for specific performance, sufficient particulars must also be elaborated that will elucidate the issues. This is to prevent 'surprise' at trial — see Bullen and Leake on *Precedent of Pleadings* (12th Ed) at p 110. An examination of the plaintiff's pleadings on this particular claim for specific performance reveals practically no information as to the performance of which part of the agreement demanded of the defendants. Is it the sale B of the said taxi or the reinstatement of the appointment? Just by insisting specific performance of the agreement when there are various obligations specified in the agreement itself is definitely too general to be desired. Even this court is left to wonder what specific performance is the plaintiff praying for. Without a precise and comprehensive prayer that has relevance C to the supporting facts so pleaded would, in my opinion, be in breach of O 18 r 15(1) of the Rules of the High Court 1980, which demands that 'A statement of claim must state specifically the relief or remedy which the plaintiff claims'.

For these reasons, I find that the plaintiff's claim must be dismissed with D costs. Nevertheless, as a precaution that I might have erred, I shall now proceed to address on the issue which I can only presume is the substance of the plaintiff's claim. Since the pleadings of the plaintiff is so inconclusive, I can only assume that the plaintiff's claim is that of a demand for the return of the taxi by insisting that it was not lawfully repossessed.

E To begin with, there can be no denial by the plaintiff that he was in arrears of daily rental payments. At the time of repossession, he was in arrears for 12 days. Though the plaintiff insists that he made payment to the defendants just a day before the repossession, the receipt produced by him shows that it only covers the period from 5 January 1996 to 10 January 1996. This leaves the period from 6 January 1996 to the 22 January 1996 F unpaid. Disregarding the allegation of waiver raised by the plaintiff, of which I shall deal in greater detail in the later part of this judgment, such act of the plaintiff constitutes a breach of the agreement. This is supported by the following clauses in the agreement: cl 5 of annex B encumbered upon the plaintiff to pay RM45 per rental day at the material time. This is G further stressed upon in cl 10 of encl B that it should be paid every day and any arrears should not be accumulated for more than three days. If it happens, warning letters will be issued. All these were undertaken by the defendants against the plaintiff — leading finally to the telegram which the plaintiff never denies he did not receive. The plaintiff's only dispute on this document is that it contains no reasons for the termination. But the claim H by him in his pleadings is never a challenge that this termination notice is invalid due to breach of natural justice for not giving reason, or otherwise.

Nonetheless, returning to the purported issue, the question remaining is whether prior to the notification by telegram of the termination, was the defendants entitled to repossess the taxi? To answer this, let us return to I examine once again the agreement which was the foundation of the contractual relationship of the parties. The subject matter of the contract is the appointment of the plaintiff as the defendants' taxi driver. Impliedly, this involves the supply to the plaintiff by the defendants of a motor vehicle to carry out the plaintiff's duties. Can such a vehicle be removed when the

plaintiff is clearly in breach of the term of the agreement? To this, the agreement is silent. But by legal deduction, a breach of a contract entitles the innocent party to terminate the contract and thereafter claims for the return of the goods and/or damages. Here, we have a situation of a repossession of the goods followed by a termination.

The plaintiff introduced a document dated 17 April 1995 which he claims varies the agreement. This document came about on a previous occasion when the taxi was repossessed. Before the defendants released the taxi upon the plaintiff's plea, the plaintiff signed this document which he undertook and acknowledged, inter alia, the following:

(1) to pay up the then existing arrears of daily rentals;

(2) that daily rentals should not be accumulated to more than seven days and if so, on the eighth day a letter of repossession (of the taxi) shall be issued. By this it must have meant a letter of authority to the repossessor to repossess the taxi;

(3) and this represents the final warning to the plaintiff (the plaintiff having one other previous repossession experience before this).

By virtue of cll 2 and 3 above, the defendants now claim that they can repossess the taxi even before the termination.

The plaintiff in his attempt to ward of the implementation of the terms of this variation document put forth the following arguments. Firstly, that this document was not stamped. Secondly, he executed it under economic duress. Thirdly, that it was not witnessed. This document, incidentally, is referred to as P3.

Taking the third objection first, the plaintiff has expressly admitted that he signed P3 and — before he signed it — the contents were read to him. In such circumstances, I know of no law that requires its admission as evidence to be corroborated by witness. This is not a document where the executor disputes the signature thereon; the plaintiff testified on oath that he did indeed sign P3. This is more than sufficient to overrule this objection. In any event, there is the unchallenged evidence of DW3 who was there to witness the plaintiff signing this document though he did not put his signature on this paper.

As regard to the first objection, an examination of P3 will reveal that its entire contents refers to the subject of the taxi which is the vehicle supplied by the defendants to the plaintiff to carry out his duties as the appointed taxi driver of the defendants. P3 for all intents and purposes regulate the subject matter, albeit the taxi — which is connected with the agreement. P3 cannot stand on its own; it must be associated with the agreement. It is very much an elaboration of the subject matter agreed upon by the parties in the agreement. It is, therefore, part and parcel of the agreement. Since the agreement is stamped and P3 is a fragment of it, no objection can be sustained to its admissibility on the ground that it is not stamped.

In respect of economic duress, the plaintiff explains that if he did not sign P3 at the material time the defendants would not have released the taxi to him. This would lead to a deprivation of his livelihood. The

Singapore case of *Third World Development & Anor v Atang Latief & Anor* (1990) 1 SCR 533 was cited in support. To determine the extent of this doctrine of economic duress, Sinnathuray J in *Third World Development* limits it to 'unless it amounts to a coercion of his will which vitiates consent'. The principle to be applied in deciding this is an enquiry into whether the person alleged to be coerced did or did not protest; whether at the material time he did or did not have an alternative cause of action open to him such as an adequate legal remedy; a remedy that he was independently advised; and whether after entering the contract he took steps to avoid it; all quoted from a passage of Lord Scarman's judgment in *Pao On v Lau Yiu Long* [1980] AC 614 at p 635.

Judging from the evidence before me and applying the principles enumerated above, I notice that the plaintiff made no protest of any form or manner either before and after P3 was executed that he was coerced into executing it. Though he insists that he does not know how to read, he candidly admits that the contents in P3 was read to him and no force was ever applied to make him sign. There is also no evidence adduced that he had taken any steps subsequently to repudiate this document. As to the alternative cause of action open to him, such as an adequate legal remedy at that time, I am afraid he had none. He had breached the agreement in failing to pay the agreed rental at the material time which would entitle the defendants to terminate the agreement. At his request for reinstatement of the taxi, the defendants accommodated him with explanatory terms in P3 to regulate the use of the taxi in regards to non-payment of daily rentals. The period was stretched to seven days before repossession notice will be issued. This gave the plaintiff time to pay. Under such favourable conditions, how can it be economic duress at the time of execution of P3? I therefore reject this objection on the ground that it is devoid of merits.

The variation by waiver is pleaded by the plaintiff in para 3 of his reply and defence to counterclaim. He alleges that cl 10 in annex B had been waived by the defendants to accommodate outstanding sums to be paid at an appropriate period. This was due to 'empirical reasons of unexpected breakdowns of the vehicle in question and unforeseeable circumstances, for example theft, unhealthiness and so forth'. In the plaintiff's testimony, he claims that he could not pay the rental daily. He had waited up to 10, 14 and even 20 days before he tendered a payment which was accepted by the defendants. But I find no evidence of this, particularly of the defendants accepting such an arrangement. The defendants have tendered evidence of various documents showing the plaintiff in arrears culminating to being blacklisted on many occasions. Besides, there were three occasions where the taxi was repossessed. This certainly do not reflect the assertion of the plaintiff that the defendants had allowed him to alter such mode of payment of daily rental. Further, I can find no situations, either express or implied, where the defendants had in any way, by deed or action, agreed to waive cl 10 of annex B to cater for the plaintiff's whims and fancies to make payment as and when he likes. The reasons tendered on the delay in payment caused by the constant damage of the windscreen and the perpetual breakdown of the taxi (without the support

of a single repair bill) are so improbable that this court can only dismiss them as mere excuses conjected by the plaintiff to cover a wrong that he had committed by failing to pay the daily rental consistently. Thus for these reasons, I hereby dismiss the plaintiff's claim of waiver.

Finally, I shall now deal with the claim in the plaintiff's counsel's submission that P3 was made on a without prejudice basis. I am completely lost as to how this can come about. When the plaintiff breached the said agreement resulting from his taxi being repossessed in 1995, he begged for settlement. He made an offer to pay the arrears and other charges so that the defendants would agree to release the vehicle back to him. This was reluctantly agreed upon by the defendants who then specified explanatory terms. Such terms were accepted by the plaintiff. He indicated this by signing on P3. This document was not made by the defendants on a without prejudice basis, neither was the plaintiff's initial request to reinstate him with the taxi ever made on such qualification. In the light of these revealing facts, I do not see how the proposition of 'without prejudice' can find a footing let alone succeeding in convincing this court. Accordingly, it is dismissed.

With all the objections raised by the plaintiff overruled, I find P3 admissible. With this and from the evidence so tendered, the defendants were under the agreement entitled to lawfully repossessed the taxi. In such circumstances, specific performance for the return of the taxi must be rejected.

As for the plaintiff's claim for damages both in lieu and in addition to specific performance, this too must be dismissed based on the above reasons and the fact that it is related to the prayer for specific performance. For special damages — where there is not only no basis but entirely unproved — I am also dismissing it.

Relating to the defendants' counterclaim, except for item 16(b), all are not proved. I hereby dismiss them. Under item 16(b), the period proved is only from 14 January 1996 to 23 January 1996. The date should commence from the actual date of repossession and not when the defendants' credit controller received information of the repossession. At RM43 per day, it should be multiplied by 10 days. This amounts to RM430. Accordingly, judgment of RM430 should be signed for the defendants against the plaintiff.

As for costs on the plaintiff's claim, it is dismissed with costs; on the defendants' counterclaim there shall be no order for cost.

Claim dismissed.

Reported by Jafisah Jaafar